

TENTATIVE RULINGS for CIVIL LAW and MOTION

June 5, 2007

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. If no hearing is requested, the prevailing party must submit an order to the Court in accordance with Rule 3.1312 of the 2007 California Rules of Court. The Court does not have facilities for providing copies of the tentative rulings. However, copies will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6841

TENTATIVE RULING

Case: **Lyon Financial Services, Inc. v. Davis Musical Theatre Co.**
Case No. CV CV 07-102

Hearing Date: **June 5, 2007** **Department Two** **9:00 a.m.**

The demurrer of cross-defendant Lyon Financial Services, Inc. to Davis Musical Theatre Company's cross-complaint for malicious prosecution is **SUSTAINED WITHOUT LEAVE TO AMEND**. The document attached to the cross-complaint shows that the class action was not commenced by or at the direction of Lyon Financial Services, Inc. It also shows that the class action is still pending and thus has not been pursued to a legal termination in favor of Davis Musical Theatre Company. (*Casa Herrera, Inc. v. Beydown* (2004) 32 Cal.4th 336, 341.)

TENTATIVE RULING

Case: **Shade v. United Health Systems**
Case No. CV CV 06-686

Hearing Date: **June 5, 2007** **Department Two** **9:00 a.m.**

Defendant's objections to written deposition questions 3-4, 7-9, 17, 20, 25-36, 38-42, 44-53, 55-60, 63, 65-66, 68, 71-72, and 74-76 are **OVERRULED**.

Defendant's objections to written deposition questions 5, 10-16, 18-19, 21-24, 54, 61-62, 64, 67, and 73 are **SUSTAINED**.

TENTATIVE RULING

Case: **Dewald v. Portage & Kartage Systems, Inc.**
Case No. CV CV 06-1949

Hearing Date: **June 5, 2007** **Department Two** **9:00 a.m.**

Plaintiff's request for judicial notice is **GRANTED**. The court also notes that plaintiff has filed a copy of the minute order from the last day of trial in *Portage & Kartage Systems, Inc. v. Carolina Casualty Systems, Inc.*, Sacramento Superior Court Case No. 03AS07001. Significantly, that order

reflects the precise terms of the settlement between Portage and Carolina Casualty which is the subject of the subpoena dispute in this case. Thus, contrary to the assertions of Carolina Casualty Insurance Company, the terms of the settlement are not confidential.

The motion to quash deposition subpoenas is **DENIED WITHOUT PREJUDICE**. Carolina Casualty Insurance Company has failed to present evidence supporting its objections to the deposition subpoenas. The court notes that Carolina Casualty Insurance Company did not file the declaration identified in its notice of motion.

TENTATIVE RULING

Case: **Thomas v. Adams**

Case No. CV CV 05-376

Hearing Date: **June 5, 2007** **Department Two** **9:00 a.m.**

Defendants' request for judicial notice of the exhibits attached to the Declaration of Jorge Ayala is **GRANTED**. Defendants' request for judicial notice of the existence of the Declaration of Larry Schapiro is **GRANTED**. The court does not take judicial notice of the truth of the facts asserted in the Declaration of Larry Schapiro. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882-883.)

The motion to strike Paragraphs 25-28, 50-74 and 81 of the Amended Complaint is **GRANTED**. The motion to strike Paragraphs 76-80 and 82 is **DENIED**.

The demurrer to the first cause of action is **OVERRULED**.

The demurrer to the second and third causes of action is **SUSTAINED WITH LEAVE TO AMEND**. The allegation that plaintiff complied with the Tort Claims Act appears only in the fourth cause of action. It was not incorporated by reference into the second and third causes of action.

The demurrer to the fourth cause of action is **SUSTAINED WITHOUT LEAVE TO AMEND**. Plaintiff's tort claim did not include any allegations that are the "factual equivalent" of her cause of action for invasion of privacy. (*Donahue v. State of California* (1986) 178 Cal.App.3d 795, 804.)